A

DATO' DR ABD ISA ISMAIL

v.

DATO' ABU HASAN SARIF & ANOR

B

FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN CJ (MALAYA)
HASHIM YUSOFF FCJ
AHMAD MAAROP FCJ
ZALEHA ZAHARI FCJ
C ZAINUN ALI FCJ
[CIVIL APPEAL NO: 02-7-03-2012 (W)]
21 JANUARY 2013

CONSTITUTIONAL LAW: *State Assemblyman - State Legislative*
D *Assembly meetings - Attendance - Failure of State Assemblyman to attend 5th Meeting of First Session and subsequent 1st Meeting of Second Session thereof - Whether having absented from 'two consecutive meetings' of the Assembly - Whether in breach of s. 51 of Kedah Constitution - Whether causing relevant state seat to fall vacant - Constitution of the*
E *State of Kedah arts. 2, 39, 51, 53*

STATUTORY INTERPRETATION: *Constitution - Constitution of the State of Kedah - Section 51 - Interpretation of words "two consecutive meetings" therein - State Legislative Assembly meetings -*
F *Failure of State Assemblyman to attend two meetings thereof - Effect and consequence - Whether causing relevant state seat to fall vacant - Constitution of the State of Kedah ss. 2, 39, 51, 53*

WORD & PHRASES: *"two consecutive meetings" - Article 51, Constitution of the State of Kedah - Meaning and import*

G

The first respondent, the State Assemblyman for the constituency of Kota Siputeh, Kedah, was absent from two meetings of the Kedah State Legislative Assembly ('Assembly'), *ie*, from the Assembly's 5th Meeting of the First Session on 19 April 2009,
H and the subsequent 1st Meeting of the Second Session on 9 August 2009. The appellant, the Speaker of the Assembly, alleged that the first respondent, by so absenting himself from "two consecutive meetings" of the Assembly without leave, had violated art. 51 of the Laws of the Constitution of Kedah ('Kedah
I Constitution'), thereby causing the Kota Siputeh Seat to fall vacant, and in the circumstances, implored the second respondent, the Election Commission of Malaysia ('EC'), to declare the seat as vacant and the first respondent as no longer the State

Assemblyman for Kota Siputeh, and further, to hold a by-election for the constituency. The EC, however, was of the view that the first respondent's absences, having occurred in two separate sessions of the Assembly, were not absences from "two consecutive meetings" within the meaning of art. 51 of the Kedah Constitution, and so declined to make the necessary declarations or hold any by-election. The appellant successfully applied to the High Court for judicial review of the EC's decision, and subsequently, an order quashing the decision and compelling the EC to hold a by-election for Kota Siputeh was granted by the court. On appeal, the Court of Appeal however set aside the High Court order. It was the view of the Court of Appeal that the EC was right in its interpretation of art. 51, namely that the said article would only be triggered if the absences occurred within one single session of the Assembly, and not otherwise. The appellant obtained leave to appeal to the Federal Court *inter alia* on the question of whether the words "two consecutive meetings" in art. 51 referred to two consecutive meetings in one session or to two consecutive meetings simpliciter - and in the event - raised the following arguments for consideration of the apex court, namely: (i) that the words in art. 51 were plain and unambiguous and there was nothing in it that indicated that "absenteeism" therein referred to two consecutive meetings in one session; and (ii) that a session, once commenced, would continue until it is dissolved or prorogued, and since His Royal Highness the Sultan of Kedah ('HRH') in this case had not prorogued the Assembly after its 5th Meeting of the First Session on 19 April 2009, the First Session therefore continued on with the result that the subsequent meeting on 9 August 2009 became in reality the 6th Meeting of the First Session.

Held (by majority: dismissing appeal; affirming the Court of Appeal)

Per Zulkefli Makinudin CJ (Malaya) (Hashim Yusoff, Ahmad Maarop, Zaleha Zahari FCJJ concurring):

(1) The appellant's interpretation of the phrase "two consecutive meetings" in art. 51 as meaning "one meeting following the earlier meeting in an uninterrupted succession", is flawed. The interpretation is flawed because it fails to take into account the meaning expressly assigned to the word "meeting" in art. 2(1) of the Kedah Constitution. When the meaning of "meeting"

as assigned by the said art. 2(1) is taken into consideration, consecutive "meeting" must be construed to mean "one meeting following an earlier meeting in an uninterrupted succession in the same session". (para 13)

(2) From the meaning assigned to the word "meeting" in art. 2(1), it is clear that meetings are sittings of the Assembly that are held in a session. The meaning of "session" shows that each session has a time frame from when the Assembly first meets after being constituted or after its prorogation or dissolution until it is terminated. Each session has its own set of meetings in an uninterrupted succession. (para 15)

(3) When the meaning of "meeting" as defined in art. 2(1) is applied to art. 51 of the Kedah Constitution, it is abundantly clear that the last sitting in one session would be the Assembly's last meeting of that session, and the first sitting of the next session is the Assembly's first meeting of the new session. Thus, the coming into existence of a new session means that the last meeting of the preceding session and the first meeting in the new session no longer follow continuously. Therefore, the last meeting of the preceding session and the first meeting of the new session is not accordingly consecutive. (para 16)

(4) The contention that HRH had not prorogued the Assembly resulting in the First Session to continue and the meeting on 9 August 2009 to become the 6th Meeting of the First Session, is without merit and runs counter to the express and clear words of the Proclamation issued by HRH (gazetted as K.P.U 10), where HRH had summoned the 1st Meeting of the Second Session on 9 August 2009. (para 17)

(5) The EC had rightly interpreted and given effect to the Proclamation in arriving at its decision. The EC was also right in submitting that it was not at liberty to question the Proclamation or its validity. The Proclamation by HRH has taken effect and had not at all material times been revoked. Indeed, all documentation, including that of the Speaker himself, showed that the meeting on 9 August 2009 was the 1st Meeting of the Second Session. (para 18)

(6) By virtue of art. 53(1) and (2) of the Kedah Constitution, HRH has both the power to command the Assembly to commence its business and then to cease its business at any

time by way of a prorogation. In such circumstances, in the absence of express provision to the contrary, there is no impediment for HRH to commence a new session without first having the preceding session prorogued.

Per Zainun Ali FCJ (dissenting and allowing appeal):

(1) From a reading of the Kedah Constitution, the decision to prorogue is the prerogative of HRH the Sultan of Kedah. It is also clear that when the Ruler exercises his discretion under art. 53(2) thereof, he acts on the advice of the State Executive Council by virtue of art. 39(1) of the Kedah Constitution. It follows that the act of prorogation is a deliberate act, and therefore, the suggestion that the Ruler is not impeded in commencing a new session without first having the preceding session prorogued is an artless interpretation to the exercise of the Ruler's power under the Kedah Constitution. (paras 42-44)

(2) A scrutiny of each and every summon made by the Ruler for each of the meetings of the Assembly shows that it is an accepted "tradition" that all of the Kedah State Assembly Meetings would begin with the Ruler's summons and the said meeting would be adjourned *sine die* unless it is dissolved or prorogued by the Ruler. The phrase "adjourned *sine die*" means to end a deliberative Assembly's sessions without setting a time to reconvene. Thus, when the Assembly resumed its sitting on the next date, the period between the two dates is termed as an "adjournment". In other words, in the context of this appeal, the Assembly was merely at an adjournment stage in between each meeting. This would mean that the purported meeting of the Second Session on 9 August 2009 is in actual fact and law, the 6th Meeting of the First Session. (paras 48-52; 55-56 & 70-72)

(3) The Proclamation by the Ruler on 1 July 2009 for the meeting to be held on 9 August 2009 was hence for the 6th meeting of the 1st session, and not a prorogation or dissolution of the Assembly. The argument that the Assembly is deemed prorogued when the Ruler issued that Proclamation is unsustainable. This is because an adjournment (as was the case with the 5th meeting) does not have the same effect on parliamentary proceedings as does a prorogation, and further, a prorogation cannot be inferred, implied or deemed, as suggested by the second respondent. The Proclamation for the

meeting on 9 August 2009, in any case, is similar in form and substance with previous proclamations summoning the 1st to the 5th meetings, and so there is no justification for the said particular Proclamation to be construed a Prorogation. (paras 68, 69 & 73)

(4) I would therefore agree with the appellant that the meeting on 9 August 2009, although described as the 1st meeting of the 2nd session, is in law and in fact the 6th meeting of the 1st session. This vitiates the 2nd respondent's argument that there were two sessions and that the 1st respondent's absences for two consecutive meetings were not in the same session. I would further agree that the phrase "two consecutive meetings" in art. 51 should be given its plain and ordinary meaning, and so interpreted, the phrase refers to one meeting following an earlier one in an uninterrupted succession. In any case, the 1st respondent was definitely absent in two consecutive meetings in one uninterrupted session. (paras 75-81 & 87)

(5) I would answer the question posed by stating that to render a seat vacant the words "two consecutive meetings" refer to two consecutive meetings, meaning one following the other in succession or in two separate sessions or more. It is completely irrelevant whether both the meetings were in the same session or otherwise because the 1st respondent absented himself on both meetings which were held consecutively. (para 90)

Bahasa Malaysia *Translation Of Headnotes*

Responden pertama, wakil rakyat bagi kawasan pilihanraya negeri Kota Siputeh, Kedah, telah tidak menghadiri dua mesyuarat Dewan Undangan Negeri Kedah ('Dewan'), iaitu di Mesyuarat Kelima Penggal Pertama Dewan pada 19 April 2009 dan Mesyuarat Pertama Penggal Kedua Dewan yang berikutnya pada 9 Ogos 2009. Perayu, iaitu Speaker Dewan, mendakwa bahawa responden pertama, dengan tidak menghadiri "dua mesyuarat Dewan berturut-turut" tanpa izin, telah melanggar fasal 51 Perlembagaan Negeri Kedah ('Perlembagaan Kedah') sekaligus menyebabkan kerusi Kota Siputeh menjadi kosong, dan atas alasan itu, telah meminta responden kedua, Suruhanjaya Pilihanraya Malaysia ('SP'), supaya mengisytiharkan kerusi berkenaan kosong dan bahawa responden pertama bukan lagi menjadi wakil rakyat sah bagi Kota Siputeh, dan seterusnya mengadakan satu

pilihanraya kecil bagi kawasan pilihanraya tersebut. SP bagaimanapun berpendapat bahawa ketidakhadiran responden pertama bukan merupakan ketidakhadiran "dua mesyuarat berturut-turut" seperti yang dimaksudkan fasal 51 Perlembagaan Kedah, disebabkan ianya berlaku dalam dua penggal Dewan yang berasingan, dan kerana itu enggan membuat pengisytiharan yang dipohon atau mengadakan sebarang pilihanraya kecil. Perayu berjaya memohon semakan kehakiman terhadap keputusan SP, dan berikutnya Mahkamah Tinggi membatalkan keputusan SP dan mengarahkan supaya SP mengadakan satu pilihanraya kecil bagi Kota Siputeh. Di rayuan, keputusan Mahkamah Tinggi bagaimanapun diketepikan oleh Mahkamah Rayuan yang berpendapat bahawa SP betul dalam pentafsirannya terhadap fasal 51, iaitu bahawa fasal tersebut hanya terbingkas jika ketidakhadiran-ketidakhadiran tersebut berlaku dalam penggal Dewan yang sama, dan tidak sebaliknya. Perayu mendapat kebenaran untuk merayu ke Mahkamah Persekutuan antara lain atas persoalan sama ada perkataan "dua mesyuarat berturut-turut" di dalam fasal 51 merujuk kepada dua mesyuarat berturut-turut dalam satu penggal atau kepada dua mesyuarat berturut-turut simpliciter - dan ekoran itu - membangkitkan hujah-hujah berikut untuk pertimbangan mahkamah tertinggi, iaitu: (i) bahawa perkataan-perkataan dalam fasal 51 adalah terang dan jelas dan tiada apa-apa pun di dalamnya yang menunjukkan bahawa "ketidakhadiran" di situ merujuk kepada dua ketidakhadiran berturut-turut di dalam satu penggal; dan (ii) bahawa sesuatu penggal itu, sebaik ia bermula, akan berterusan sehinggalah ianya dibubarkan atau ditangguhkan, dan oleh kerana Duli Yang Mulia Sultan Kedah ('DYMM') dalam kes ini tidak menangguhkan ataupun memprorog Dewan selepas Mesyuarat Kelima Penggal Pertama pada 19 April 2009, Penggal Pertama dengan itu berjalan secara berterusan sekaligus menjadikan mesyuarat pada 9 Ogos 2009 pada realitinya Mesyuarat Keenam Penggal Pertama.

Diputuskan (secara majoriti: menolak rayuan; mengesahkan Mahkamah Rayuan)
Oleh Zulkefli Makinudin HB (Malaya) (Hashim Yusoff, Ahmad Maarop, Zaleha Zahari HHMP menyetujui):

(1) Pentafsiran yang dibuat oleh perayu terhadap ungkapan "dua mesyuarat berturut-berturut" di dalam fasal 51 sebagai bermaksud "satu mesyuarat yang menyusuli mesyuarat sebelumnya secara berturut-turut" adalah cacat. Pentafsiran tersebut cacat kerana gagal mengambilkira maksud nyata yang

A diberikan kepada perkataan "mesyuarat" oleh fasal 2(1) Perlembagaan Kedah. Apabila maksud "mesyuarat" seperti yang diberikan oleh fasal 2(1) tersebut diambilkira, "mesyuarat" berturut-turut harus ditafsirkan sebagai bermakna "satu mesyuarat yang menyusul satu mesyuarat sebelumnya secara B berturut-turut di dalam satu penggal yang sama".

(2) Dari maksud yang diberikan kepada perkataan "mesyuarat" oleh fasal 2(1), ianya jelas bahawa mesyuarat adalah persidangan Dewan yang diadakan dalam sesuatu penggal. C Maksud "penggal" menunjukkan bahawa setiap penggal mempunyai had masanya sendiri bermula dari masa Dewan mula bermesyuarat selepas pemanggilan atau selepas diprorog atau dibubarkan sehinggalah ke masa ia ditamatkan. Setiap penggal mempunyai rangkaian mesyuarat-mesyuaratnya sendiri D dalam satu sesi yang berterusan.

(3) Apabila maksud "mesyuarat" seperti yang ditafsir oleh fasal 2(1) dipakai kepada fasal 51 Perlembagaan Kedah, ianya sangat jelas bahawa persidangan terakhir di dalam sesuatu penggal menjadi mesyuarat Dewan yang terakhir bagi penggal E tersebut, sementara mesyuarat pertama penggal berikutnya akan menjadi mesyuarat Dewan yang pertama bagi penggal baru itu. Oleh itu, dengan kedatangan sesuatu penggal baru itu bermakna sudah tidak wujud lagi kesinambungan di antara mesyuarat terakhir penggal sebelumnya dan mesyuarat pertama F penggal baru tersebut. Dengan yang demikian, mesyuarat terakhir penggal sebelumnya dan mesyuarat pertama penggal berikutnya tidak boleh dikatakan berturut-turut.

(4) Pengataan bahawa DYMM tidak memprorog Dewan sekaligus G menyebabkan Penggal Pertama berterusan dan bahawa mesyuarat pada 9 Ogos 2009 sebenarnya adalah Mesyuarat Keenam Penggal Pertama, adalah tidak bermerit dan bertentangan dengan kandungan ekspres dan jelas Pengisytiharan yang dibuat oleh DYMM (digazet sebagai H K.P.U 10), di mana DYMM telah memanggil Mesyuarat Pertama Penggal Kedua pada 9 Ogos 2009.

(5) SP, dalam mencapai keputusannya, telah mentafsir Pengisytiharan dengan betul dan telah memberi kesan I kepadanya. SP juga betul dalam mengatakan bahawa ia tidak berhak untuk mempesoalkan Pengisytiharan ataupun kesahannya. Pengisytiharan oleh DYMM telah dilaksanakan

dan tidak pada bila-bila masa pun dibatalkan. Malah, semua dokumen-dokumen, termasuk yang dikeluarkan oleh Speaker sendiri, menunjukkan bahawa mesyuarat pada 9 Ogos 2009 adalah Mesyuarat Pertama Penggal Kedua.

(6) Berdasarkan fasal 53(1) dan (2) Perlembagaan kedah, DYMM memiliki kedua-dua kuasa untuk memanggil Dewan bagi memulakan urusannya dan bagi menamatkan urusannya kemudian dari itu. Dalam halkeadaan sedemikian, dalam ketiadaan peruntukan ekspres sebaliknya, tiada halangan bagi DYMM untuk memulakan penggal baru tanpa terlebih dahulu memprorog penggal sebelumnya.

Oleh Zainun Ali HMR (menentang dan membenarkan rayuan):

(1) Berdasarkan pembacaan Perlembagaan Kedah, keputusan untuk memprorog adalah hak keistimewaan DYMM Sultan Kedah. Adalah juga jelas bahawa bilamana Sultan melaksanakan budibicaranya di bawah fasal 53(1) di situ, beliau bertindak atas nasihat Majlis Mesyuarat Kerajaan Negeri berasaskan kepada fasal 39(1) Perlembagaan Kedah. Ianya mengikut bahawa tindakan memprorog adalah satu tindakan yang disengaja yang bermakna, andaian bahawa Sultan tidak terhalang untuk memulakan penggal baru tanpa perlu terlebih dahulu memprorog penggal sebelumnya adalah satu pentafsiran yang hambar terhadap pelaksanaan kuasa Sultan di bawah Perlembagaan Kedah.

(2) Meneliti setiap saman yang dibuat oleh Sultan bagi memanggil setiap mesyuarat Dewan menunjukkan bahawa ia merupakan "adat" yang diterimapakai bahawa kesemua Mesyuarat Dewan Undangan Negeri Kedah bermula dengan pemanggilan oleh Sultan dan mesyuarat tersebut akan ditangguhkan *sine die* kecuali jika dibubarkan atau diprorog oleh Sultan. Perkataan "ditangguh *sine die*" bermakna menamatkan penggal permesyuaratan Dewan tanpa menetapkan tarikh untuk penyambungan semula. Oleh itu, bilamana Dewan menyambung persidangan pada tarikh berikutnya, tempoh masa antara dua tarikh tersebut dipanggil "penangguhan". Dalam ertikata lain, dalam konteks rayuan semasa, Dewan hanya berada di tahap penangguhan di antara dua mesyuarat tersebut. Ini bermakna mesyuarat yang dikatakan mesyuarat Penggal Kedua pada 9 Ogos 2009 tersebut adalah sebenarnya, di sisi fakta dan undang-undang, Mesyuarat Keenam Penggal Pertama.

(3) Pengisytiharan yang dibuat oleh Sultan pada 1 Julai 2009 untuk mesyuarat 9 Ogos 2009 dengan itu adalah untuk mesyuarat keenam penggal pertama dan bukannya tindakan memprorog atau membubarkan Dewan. Hujah bahawa Dewan dianggap telah diprorog bilamana Sultan membuat Pengisytiharan memanggil mesyuarat pada 9 Ogos 2008 adalah tidak berasas. Ini kerana sesuatu penangguhan (sepertimana dengan mesyuarat ke 5) tidak mempunyai kesan yang sama terhadap prosiding parlimen seperti satu tindakan memprorog. Selain itu, tidak seperti yang dikatakan oleh responden kedua, inferens, andaian atau anggapan tidak boleh dibuat terhadap tindakan memprorog. Apapun, Pengisytiharan untuk mesyuarat pada 9 Ogos 2009 adalah sama bentuk dan kandungannya dengan pengisytiharan-pengisytiharan bagi memanggil mesyuarat-mesyuarat pertama hingga kelima, dan oleh itu tiada justifikasi untuk khusus menganggap Pengisytiharan itu sebagai suatu tindakan memprorog.

(4) Saya dengan itu bersetuju dengan perayu bahawa mesyuarat pada 9 Ogos 2009, walaupun diperihalkan sebagai mesyuarat pertama penggal kedua, adalah di sisi undang-undang dan fakta mesyuarat keenam penggal pertama. Ini sekaligus menghapuskan hujah responden kedua bahawa terdapat dua penggal dan bahawa ketidakhadiran responden pertama pada dua mesyuarat berturut-turut tidak berlaku dalam penggal yang sama. Saya juga bersetuju bahawa ungkapan "dua mesyuarat berturut-turut" harus diberikan maksudnya yang biasa, dan dengan mentafsirkannya sedemikian cara, ianya bermaksud satu mesyuarat yang mengekori satu mesyuarat sebelumnya secara terus menerus. Apapun, responden pertama jelas tidak hadir pada dua mesyuarat secara berturut-turut dalam penggal yang sama.

(5) Saya akan menjawab persoalan yang dikemukakan dengan menyatakan bahawa bagi menjadikan sesuatu kerusi itu kosong perkataan "dua mesyuarat berturut-turut" merujuk kepada dua mesyuarat berturut-turut, iaitu satu mesyuarat mengekori satu mesyuarat sebelumnya secara berturut-turut dalam satu penggal atau dua penggal atau lebih. Adalah tidak relevan langsung sama ada kedua-dua mesyuarat tersebut berlaku dalam satu penggal atau sebaliknya, kerana responden pertama telah tidak hadir di kedua-dua mesyuarat yang mana telah berlangsung secara berturut-turut.

Case(s) referred to:

Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor (1) [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72 SC ***(refd)***

In re London v. Northern Bank [1901] Chancery Div 728 ***(refd)***

Menteri Hal Ehwal Dalam Negeri v. Raja Petra Raja Kamarudin & Another Appeal [2009] 3 CLJ 513 FC ***(refd)***

Merdeka University Bhd v. Government of Malaysia [1981] CLJ 175; [1981] CLJ (Rep) 191 HC ***(refd)***

Wan Khairani Wan Mahmood v. Ismail Mohamed & Satu Lagi [2007] 4 CLJ 28 CA ***(refd)***

Legislation referred to:

Federal Constitution, art. 132(1)

Kedah Constitution, arts. 2(1), 51, 53(1), (2)

Other source(s) referred to:

Black's Law Dictionary, 9th edn, p. 47

Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, 23rd edn, 2004, p. 274

For the appellant - Sulaiman Abdullah (Edmund Bon Tai Soon, Zulqurnain Lukman & Chan Yen Hui with him); M/s Chooi & Co

For the 1st respondent - Mohd Hafarizam Harun (Abu Bakar Isa Ramat & Nor Emelia Mohd Iszeham with him); M/s Hafarizam Wan & Aishah Mubarak

For the 2nd respondent - Amarjeet Singh Serjit Singh SFC

Watching brief for the Government of the State of Kedah - Anas Ahmad Zakie

[Appeal from Court of Appeal; Civil Appeal No: W-02-2654-2009]

Reported by Wan Sharif Ahmad

JUDGMENT

Zulkefli Makinudin CJ (Malaya):

Introduction

[1] This is an appeal by the appellant against the decision of the Court of Appeal that reversed the decision of the High Court which had allowed the application for judicial review by the appellant against the respondents.

[2] Before the High Court, the appellant, the Speaker of the Kedah State Legislative Assembly was the applicant. The first respondent was the State Assemblyman for the Kota Siputeh State Constituency of Kedah and the second respondent was the Election Commission of Malaysia ("EC"). I shall refer to the parties as they were before the High Court.

[3] The applicant in his application for judicial review before the High Court is seeking the following orders against the first respondent:

(i) a writ of *quo warranto* to ask the first respondent to show cause and give confirmation how and under what basis/or authority that the first respondent is still the State Assemblyman for Kota Siputeh;

(ii) a declaration that the first respondent is no longer the Kota Siputeh Assemblyman;

(iii) a declaration that the Legislative Assembly of the State of Kedah for the constituency of Kota Siputeh (N3) is vacant; and

(iv) a mandatory injunction preventing the first respondent and/or his agents from carrying out the responsibilities, function and duties as Kota Siputeh Assemblyman.

Against the second respondent the applicant is seeking the following reliefs:

(1) An order of *certiorari* to quash the second respondent's decision and/or action as per its letter dated 1 September 2009 that:

(i) the Kota Siputeh State Seat is not vacant;

(ii) the first respondent is still the Kota Siputeh Assemblyman; and

(iii) no By-election would be held by virtue of (i) and (ii) above.

(2) An order of *mandamus* to compel the second respondent to issue a Writ of Election and to hold a By-election to the Kota Siputeh State Seat.

[4] The High Court allowed the applicant's application. The High Court in its decision made the following orders as against the second respondent:

(i) an order of *certiorari* quashing the decision of the EC which had held that there was no casual vacancy for the Kota Siputeh State Seat; and

(ii) an order of *mandamus* compelling the EC to issue a Writ of Election and hold a By-election for the said seat.

As against the first respondent the High Court granted an order-in-terms of the prayers sought for in the application except for a writ of *qua warranto* for the reason that the first respondent is not a person who holds office in the public service as set out under art. 132(1) of the Federal Constitution.

Leave To Appeal

[5] Leave to appeal against the decision of the Court of Appeal was granted by this court for the determination of the following question:

> Whether on the true interpretation of Article 51 of the Laws of the Constitution of Kedah, the absenteeism requirement, in order to render a seat vacant (ie, "two consecutive meetings"), refers to two consecutive meetings in one "session" or to two consecutive meetings simpliciter".

Background Facts

[6] The relevant facts of the case as set out by the High Court are reproduced as follows:

(1) The Legislative Assembly of the State of Kedah ("Kedah Legislative Assembly") was dissolved on 13 February 2008 which led to the 12th General Election of the Kedah Legislative Assembly on 8 March 2008 ("12th General Election").

(2) After the 12th General Election, political parties under the Pakatan Rakyat coalition succeeded in obtaining the majority of the 36 seats which were contested during the said 12th General Election and consequently formed the current Kedah State Government.

(3) His Royal Highness the Sultan of Kedah ("HRH") thereafter summoned the meeting of the Kedah Legislative Assembly on 5 May 2008 at 9am. This is the 1st Meeting (of the First Session) of the 12th Kedah Legislative Assembly.

(4) Subsequently, HRH summoned the Kedah Legislative Assembly for another meeting on 20 May 2008 at 9am. This is the 2nd Meeting (of the First Session) of the 12th Kedah Legislative Assembly.

(5) The 2nd Meeting (of the First Session) was subsequently adjourned *sine die*.

(6) Another meeting was summoned by HRH on 25 August 2008 at 9am. This is the 3rd Meeting (of the First Session).

(7) The 3rd Meeting (of the First Session) was subsequently adjourned *sine die*.

(8) The Kedah Legislative Assembly was summoned for a 4th Meeting (of the First Session) on 18 November 2008 at 9am by HRH.

(9) The 4th Meeting (of the First Session) was subsequently adjourned *sine die*.

(10) The 5th Meeting (of the First Session) was held on 19 April 2009 at 9am. The first respondent was absent from the said meeting without leave of the applicant.

(11) The 5th Meeting (of the First Session) was subsequently adjourned *sine die*.

(12) HRH had summoned for another meeting on 9 August 2009 at 9am as the date and time for the 1st Meeting (of the Second Session) of the Kedah Legislative Assembly. The first respondent was also absent from this meeting without leave of the applicant.

(13) Subsequently, the applicant was informed by one Encik Zaidi bin Ahmad ("Zaidi") who is the 'Pembantu Tadbir (Kesetiausahaan)' of the Kedah Legislative Assembly office that the latter had contacted by telephone the first respondent on 12 August 2009 (approximately around 3pm) to inquire into the first respondent's absence from the Kedah Legislative Assembly for two consecutive meetings without leave of the applicant.

(14) After the said telephone conversation and at approximately 5pm, the first respondent faxed a letter dated 10 August 2009 together with a Medical Certificate dated 9 August 2009 to the State Legislative Assembly's Office and State Executive Meeting Council (Pejabat Dewan Undangan Negeri dan Majlis Mesyuarat Kerajaan Negeri Kedah).

(15) On 16 August 2009 the first respondent met the applicant in the latter's office and the first respondent submitted his original letter dated 10 August 2009 and the Medical Certificate dated 9 August 2009.

(16) The applicant did not accept the first respondent's Medical Certificate and his reasons for being absent on 9 August 2009 for the following reasons:

(a) if the first respondent is unable to attend any meeting the said member must obtain leave from the applicant as Speaker of the Kedah Legislative Assembly. Once leave is granted the applicant will inform the Kedah Legislative Assembly of his absence for further action;

(b) the first respondent did not contact or make any attempt to contact the applicant or the Secretary of the Kedah Legislative Assembly on 9 August 2009 or anytime immediately thereafter about his absence until he was contacted by Encik Zaidi on 12 August 2009;

(c) if the first respondent had indeed contacted the Opposition Leader of the Kedah Legislative Assembly, YB Dato' Seri Diraja Mahdzir bin Khalid ("Opposition Leader") on 9 August 2009 to inform the latter about his absence, it is perplexing that the first respondent would not have informed the applicant about his absence on 9 August 2009;

(d) the letter dated 10 August 2009 and the Medical Certificate dated 9 August 2009 are back-dated documents and it is an afterthought; and

(e) the applicant has reason to believe that on 10 August 2009, the first respondent had organised and attended a programme at Kampung Kolam Tok Arang making contributions to the victims of a natural disaster at the said kampong. The programme was reported in a local newspaper called Sinar Harian (Kubang Pasu).

(17) Pursuant thereto the applicant wrote a letter dated 17 August 2009 to the Election Office of the State of Kedah, informing them that there is a vacancy in the Kota Siputeh State Seat.

(18) The second respondent's reply on 7 September 2009 adverted to above, resulted in the present application for judicial review by the applicant. The second respondent's reply can be summarised as follows:

(a) that the first respondent is still the Kota Siputeh Assemblyman and that there is no vacancy in the said State Seat;

(b) the meetings which were not attended by the first respondent were not two consecutive meetings within the meaning of Article 51 of the Laws of the Constitution of Kedah ("the Kedah Constitution"). The two consecutive absences must occur within one "penggal persidangan" (within one session). In the present case, the two consecutive meetings which were not attended by the first respondent are two meetings in different sessions.

(c) the second respondent accepted the Medical Certificate submitted by the first respondent as being the explanation for his absence at 9 August 2009 meeting. The second respondent further held that the failure on the part of the first respondent to submit his Medical Certificate earlier or on 9 August 2009 did not render the Medical Certificate void; and

(d) before Article 51 of the Kedah Constitution can be invoked, the matter has to be referred to the Rights and Privileges Committee of the 12th Legislative Assembly.

Findings Of The High Court

[7] Before the High Court the principal issue for determination revolves around whether the Kota Siputeh State Seat had by operation of law under art. 51 of the Kedah Constitution become vacant as the first respondent was absent for two consecutive meetings of the Legislative Assembly without the leave of the Speaker. The learned judge of the High Court held that the applicant as the Speaker was correct in his interpretation of art. 51 of the Kedah Constitution and that the first respondent's seat had become vacant by the operation of law. The second respondent was therefore wrong to have decided that the seat was not vacant and the High Court quashed the second respondent's decision.

Findings Of The Court Of Appeal

[8] The Court of Appeal in allowing the appeal of the respondents found that the meeting on 19 April 2009, being the 5th Meeting of the First Session and the meeting on 9 August 2009, being the 1st Meeting of the Second Session, were not "two consecutive meetings" as envisaged by art. 51 of the Kedah Constitution. The first respondent's seat was therefore held not to be vacant.

Decision

[9] Learned counsel for the applicant in his submission before us amongst others contended that the words of art. 51 of the Kedah Constitution are clear, plain and unambiguous, and therefore this court ought to give effect to its ordinary meaning irrespective of its consequences. If the Legislature had intended that the absenteeism must be in the same session, it would have had inserted the words "in a session" after the phrase "two consecutive meetings". It is not open to this court to import the phrase "two consecutive meetings in a session" when none was intended at the outset by the Legislature. No words should be added to art. 51 of the Kedah Constitution when and where they were not intended.

[10] For the applicant it was also submitted following the interpretation provision of art. 2 of the Kedah Constitution, a "session" will continue until it is dissolved or prorogued. In the present case there was no prorogation or dissolution of the Legislative Assembly after the meeting held on 19 April 2009, which is the 5th Meeting of the First Session. The Proclamation by HRH issued on 1 July 2009 was for the 1st Meeting (of the Second Session) to be held on 9 August 2009 and not to prorogue or dissolve the Legislative Assembly.

[11] Learned counsel for the applicant further submitted that in any event, it is irrelevant whether both the meetings were in the same session or otherwise because the first respondent missed both of the said meetings which were held consecutively.

[12] I am of the view that answering the question posed before this court calls for the correct interpretation of art. 51 of the Kedah Constitution which is to be read together with the interpretation provision of art. 2(1) of the said Constitution in relation to the words "meeting" and "session". The effect of the

Proclamation by HRH in summoning the Second Session of the Legislative Assembly has also to be considered in determining the question posed. Article 51 of the Kedah Constitution provides as follows:

> If any member of the Legislative Assembly is absent from the Assembly without leave of the Speaker for two consecutive meetings his seat shall become vacant.

[13] The applicant in support of his contention that the plain and ordinary meaning is to be accorded to the phrase "two consecutive meetings" referred to us the dictionary meaning for the word "consecutive" from the *Shorter Oxford English Dictionary*, namely, "Following continuously; following one's or its predecessor in uninterrupted sequence". The phrase in art. 51 of the Kedah Constitution was then interpreted to mean one meeting following the earlier meeting in an uninterrupted succession. With respect I do not agree with such a construction. This interpretation is flawed because it fails to take into account the meaning expressly assigned to the word "meeting" in art. 2(1) of the Kedah Constitution. I am of the view when the meaning of "meeting" as assigned by the said article is taken into consideration, consecutive "meeting" must be construed to mean one meeting following an earlier meeting in an uninterrupted succession in the same session.

[14] Article 2(1) of the Kedah Constitution requires that the words "meeting" and "session" have the meaning respectively assigned to them thereunder unless the context otherwise requires. In the present case it is my view that in the interpretation of art. 51 of the Kedah Constitution the context does not require that "meeting" and "session" be given different meanings than that assigned under art. 2(1) which reads as follows:

> In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:
>
> 'meeting' means any sitting or sittings of the Legislative Assembly commencing when the Assembly first meets after being summoned at any time and terminating when the Assembly is adjourned *sine die* or at the conclusion of a session without adjournment.
>
> 'session' means the sittings of the Legislative Assembly commencing when the Assembly first meets after being constituted or after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or is dissolved without having been prorogued.

[15] In my judgment from the meaning assigned to the word "meeting", it is clear that meetings are sittings of the Legislative Assembly that are held in a session. The meaning of session shows that each session has a time frame from when the Assembly first meets after being constituted or after its prorogation or dissolution until it is terminated. Each session has its own set of meetings in an uninterrupted succession.

[16] I am of the view that when the meaning of "meeting" as defined in art. 2(1) is applied to art. 51 of the Kedah Constitution, it is abundantly clear that the last sitting in one session would be the Assembly's last meeting of that session, and the first sitting of the next session is the Assembly's first meeting of the new session. Thus the coming into existence of a new session means that the last meeting of the preceding session and the first meeting in the new session no longer follow continuously. Therefore the last meeting of the preceding session and the first meeting of the new session is not accordingly consecutive.

[17] I shall now deal on the effect of HRH summoning the Second Session of the Legislative Assembly. For the applicant it was argued that since HRH had not prorogued the Legislative Assembly the First Session continued and the meeting on 9 August 2009 was in actual fact the 6th Meeting of the First Session. With respect, this interpretation in my view is contrary to the express and clear words of the Proclamation issued by HRH, gazetted as K.P.U. 10, where HRH had summoned the 1st Meeting of the Second Session on 9 August 2009.

[18] It is my finding that the EC had rightly interpreted and given effect to the Proclamation in arriving at its decision. Learned counsel for the second respondent was right in submitting that the EC was not at liberty to question the Proclamation or question its validity. The Proclamation by HRH has taken effect and had not at all material times been revoked. All documentation, even that of the Speaker himself, shows that the meeting on 9 August 2009 was the 1st Meeting of the Second Session. This can be seen in the letter dated 17 August 2009 where the Speaker informed the first respondent of the seat becoming vacant due to the first respondent's absence. In this letter he had referred to the meeting on 9 August 2009 as the 1st Meeting of the Second Session. It is also noted in the letter dated 12 October 2009 the Secretary of the Legislative Assembly informed all parties concerned that the meeting to be held on 17 November 2009 was the 2nd Meeting of the Second Session.

[19] Article 53(1) of the Kedah Constitution empowers HRH to summon the Legislative Assembly, and that HRH can exercise this power from "time to time". Article 53(1) reads as follows:

> The Ruler shall from time to time summon the Legislative Assembly and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.

While art. 53(2) states that:

> The Ruler may prorogue or dissolve the Legislative Assembly.

[20] I am of the view from the clear wordings of art. 53(1) of the Kedah Constitution, no one except HRH can summon the Legislative Assembly to meet. This power is of course exercised on the advice of the Executive Council. For the Kedah State Legislative Assembly, it is noted that the practice is to summon the 1st meeting of a new session without the preceding session being expressly prorogued. I also find that there is no provision that requires the preceding session to be prorogued before a new session can come into existence. On this point useful reference can be made to *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn. 2004 wherein at p. 274 the author explains the meaning and effect of prorogation as follows:

> The prorogation of parliament is a prerogative act of the Crown. Just as Parliament can commence its deliberations only at the time appointed by the Queen, so it cannot continue them any longer than she pleases.
>
> The effect of a prorogation is at once to suspend all business, including committee proceedings, until Parliament shall be summoned again, and to end the sittings of Parliament.

[21] I am of the view that by virtue of art. 53(1) and (2) of the Kedah Constitution, HRH has both the power to command the Legislative Assembly to commence its business and then to cease its business at any time by way of a prorogation. In such circumstances, in the absence of express provision to the contrary, there is no impediment for HRH to commence a new session without first having the preceding session prorogued.

Conclusion

[22] For the abovestated reasons I would answer the question posed in this appeal by stating that in order to render a seat vacant the words "two consecutive meetings" refers to two consecutive meetings in one session. My learned brothers Hashim Yusoff, FCJ, Ahmad Maarop, FCJ and my learned sister Zaleha bt. Zahari, FCJ have read this judgment in draft and have expressed their agreement with it. In the result the decision of the Court of Appeal is affirmed and the appeal is dismissed. We make no order as to costs of the appeal before this court.

Zainun Ali FCJ:

[23] On 17 August 2009, the routine of the Kedah State Legislative Assembly ("the Assembly") took a turn when the Appellant contended that due to the 1st respondent's absence on two consecutive meetings of the Assembly, the latter's seat had therefore fallen vacant by operation of law.

[24] It is immediately clear that this is a novel point and one in which both sides of the political divide have to come to grips with. The appellant's stand however was roundly rebutted by the 2nd respondent, resulting in an application by the appellant in the High Court for certain specific reliefs. The learned High Court Judge ruled in the appellant's favour. However the decision was reversed in the Court of Appeal. Leave was granted by the Federal Court, hence this appeal.

[25] Since the judgment of Zulkefli Makinudin, CJM (FCJ) have carefully narrated the background facts, I shall dispense with having to repeat them here, save to highlight some points of importance as and when the need arises.

[26] When leave to appeal was granted by the Federal Court against the decision of the Court of Appeal, the question posed to it for determination was:

> Whether on the true interpretation of Article 51 of the Laws of the Constitution of Kedah, the absenteeism requirement, in order to render a seat vacant (ie, "two consecutive meetings) refer to two consecutive meetings in one "session" or to two consecutive meetings simpliciter."

A **In The High Court**

[27] Based on the primary issue for determination ie, whether the Kota Siputeh State Seat had, by operation of law under art. 51 of the Kedah Constitution become vacant due to the absence of the 1st respondent for two consecutive meetings without leave of the Speaker, the learned High Court Judge found that:

B

(i) The Speaker had correctly interpreted art. 51 of the Kedah Constitution and that the 1st respondent's seat had become vacant by operation of law; and that

C

(ii) The second respondent was therefore wrong to have decided that the seat was not vacant.

[28] The learned High Court Judge also quashed the second respondent's decision.

D

In The Court Of Appeal

[29] The Court of Appeal however allowed the first and second respondents' appeal. It found that the meeting held on 19 April 2009, being the 5th Meeting of the First Session and the meeting on 9 August 2009 being the 1st Meeting of the Second Session were not "two consecutive meetings" as countenanced by art. 51 of the Kedah Constitution. The first respondent therefore remains as the State Assemblyman for Kota Siputeh as his seat was held not vacant.

E

F

[30] For ease of reference. I shall adopt in full the relevant chronology of events as were stated by the learned High Court Judge as follows.

G

[31] The Legislative Assembly of the State of Kedah ("Kedah Legislative Assembly") was dissolved on 13 February 2008 which led to the 12th General Election of the Kedah Legislative Assembly on 8 March 2008 ("12th General Election").

H

[32] After the 12th General Election, political (parties) under the Pakatan Rakyat coalition succeeded in obtaining the majority of the 36 seats which were contested during the said 12th General Election and consequently formed the current Kedah State Government.

I

[33] His Royal Highness the Sultan of Kedah ("HRH") thereafter summoned the meeting of the Kedah Legislative Assembly on 5 May 2008 at 9am. This is the 1st Meeting (of the First Session) of the 12th Kedah Legislative Assembly.

[Exhibit All-5 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[34] Subsequently, HRH summoned the Kedah Legislative Assembly for another meeting on 20 May 2008 at 9am. This is the 2nd Meeting (of the First Session) of the 12th Kedah Legislative Assembly.

[Exhibit All-6 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[35] The 2nd Meeting (of the First Session) was subsequently adjourned *sine die*.

[Exhibit All-7 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[36] Another meeting was summoned by HRH on 25 August 2008 at 9am. This is the 3rd Meeting (of the First Session).

[Exhibit All-8 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[37] The 3rd Meeting (of the First Session) was subsequently adjourned *sine die*.

[Exhibit All-9 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[38] The Kedah Legislative Assembly was summoned for a 4th Meeting (of the First Session) on 18 November 2008 at 9am by HRH.

[Exhibit All-10 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[39] The 4th Meeting (of the First Session) was subsequently adjourned *sine die*.

[Exhibit All-13 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[40] The 5th Meeting (of the First Session) was held on 19 April 2009 at 9am.

[Exhibit All-14 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

The 1st respondent was absent from the said meeting without leave of the appellant. This is undisputed fact.

[41] The 5th Meeting (of the First Session) was subsequently adjourned *sine die*.

[Exhibit All-11 - 15 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[42] HRH had summoned for another meeting on 9 August 2009 at 9am as the date and time for the 1st Meeting (of the Second Session) of the Kedah Legislative Assembly.

[Exhibit All-11 - 16 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

The 1st Respondent Was Also Absent From This Meeting Without Leave Of The Appellant

[43] Subsequently, the Appellant was informed by one En. Zaidi bin Ahmad ("Zaidi") who is the 'Pembantu Tadbir (Kesetiausahaan)' of the Kedah Legislative Assembly office that the latter had contacted the 1st respondent on 12 August 2009 (approximately around 3pm) to inquire into the 1st respondent's absence from the Kedah Legislative Assembly for two consecutive meetings without leave of the appellant.

[44] After the said telephone conversation and at approximately 5pm, the 1st respondent faxed a letter dated 10 August 2009 together with a medical certificate dated 9 August 2009 to the State Legislative Assembly's Office and State Executive Meeting Council ('Pejabat Dewan Undangan Negeri dan Majlis Mesyuarat Kerajaan Negeri Kedah').

[45] On 16 August 2009, the 1st respondent met the appellant in the latter's office and the 1st respondent submitted his original letter dated 10 August 2009 and the medical certificate dated 9 August 2009.

[46] The appellant did not accept the 1st respondent's medical certificate for being absent on 9 August 2009 for the following reasons:

(a) if 1st respondent is unable to attend any meeting the said member must obtain leave from the appellant as Speaker of the Kedah Legislative Assembly. Once leave is granted the appellant will inform the Kedah Legislative Assembly of his absence for further action;

(b) the 1st respondent did not contact or make any attempt to contact the appellant or the Secretary of the Kedah Legislative Assembly on 9 August 2009 or anytime immediately thereafter about his absence until he was contacted by En. Zaidi on 12 August 2009;

(c) if the 1st respondent had indeed contacted the Opposition Leader of the Kedah Legislative Assembly, YB Dato' Seri Diraja Mahdzir bin Khalid ("Opposition Leader") on 9 August 2009 to inform the latter about his absence, it is perplexing that the 1st respondent would have informed the appellant about his absence on 9 August 2009;

(d) the letter dated 10 August 2009 and the Medical Certificate dated 9 August 2009 are back-dated documents and it is an afterthought; and

(e) the appellant has reason to believe that on 10 August 2009, the 1st respondent had organised and attended a programmes at Kampung Kolam Tok Arang making contributions to the victims of a natural disaster at the said kampong. The programme was reported in a local newspaper called Sinar Harian (Kubang Pasu).

[47] Pursuant thereto the appellant wrote a letter dated 17 August 2009 to the Election Office of the State of Kedah, informing them that there is a vacancy in the Kota Siputeh State Seat.

[48] The 2nd respondent's reply on 7 September 2009 adverted to above, resulted in the present application. The 2nd respondent's reply can be summarised as follows:

(a) that the 1st respondent is still the Kota Siputeh Assemblyman and that the there is no vacancy in the said State Seat;

(b) the meetings which were not attended by the 1st respondent were not two consecutive meetings within the meaning of art. 51 of the Kedah Constitution. The two consecutive absences must occur within one 'penggal persidangan' (within one session). In the present case, the two consecutive meetings which were not attended by the 1st respondent are **two meetings in different sessions**; (emphasis added)

(c) the 2nd respondent accepted the Medical Certificate submitted by the 1st respondent as being the explanation for his absence at the 9 August 2009 meeting. The 2nd respondent further held that the failure on the part of the 1st respondent to submit his Medical Certificate earlier or on 9 August 2009 did not render the Medical Certificate void;

and

(d) that before article 51 of the Kedah Constitution can be invoked, the matter has to be referred to the Rights and Privileges Committee of the 12th Legislative Assembly.

[Exhibit All - 22 and Exhibit All - 23 in the Affidavit in Support of the Applicant affirmed on 28.9.2009, encl. (3).]

[49] In view of the above, the question before us can be determined by a careful scrutiny of the relevant provision in the Kedah State Constitution and applying appropriate canons of construction in interpreting the same.

[50] Thus one can begin by asking how would art. 51 of the Kedah State Constitution ("art. 51") be interpreted?

Article 51 states as follows:

If any member of the Legislative Assembly is **absent** from the Assembly **without leave** of the speaker **for 2 consecutive meetings,** his seat shall become **vacant.** (emphasis added)

[51] From a reading of the rival contention of both parties, it is clear that the construction to be assigned to the phrase two "consecutive meetings" lies at the heart of this appeal.

[52] Counsel for the appellant proposed three pre-conditions which he claims are to be satisfied before a seat can be declared to be vacant pursuant to art. 51. The said three pre-conditions are as listed below:

(i) a member of the Legislative Assembly must be absent from the Assembly;

(ii) the said member must be absent for two consecutive meetings; and

(iii) that his absence from the Assembly is without leave of the Speaker.

The 1st Pre-condition (Absent From The Assembly)

[53] Since it is not disputed by both the 1st and 2nd respondent that the 1st respondent was absent from the State Assembly meetings on 19 April 2009 and 9 August 2009, no issue arises under this head. But what is in contention however is whether these two absences constitute being absent from the Assembly for **two consecutive meetings.** (emphasis added)

The act of absenteeism here is by a member of the Legislative Assembly. The phrase "absent from the Assembly" in art. 51 means the state of being away from the Assembly for whatever reason. See:

(1) *Menteri Hal Ehwal Dalam Negeri v. Raja Petra Raja Kamarudin & Another Appeal* [2009] 3 CLJ 513.

(2) *Wan Khairani Wan Mahmood v. Ismail Mohamed & Satu Lagi* [2007] 4 CLJ 28

(3) *In re London v. Northern Bank* [1901] Chancery Div 728

2nd Pre-condition (Absent For Two Consecutive Meetings)

[54] The 1st pre-condition thus flows on to the 2nd, which is whether the phrase "two consecutive meetings" in art. 51 refers to two consecutive meetings in a session. It must be said here and now that the phrase "in a session" was inferred by the respondents.

[55] The appellant however submitted that the words and phrases in art. 51 are plain and unambiguous. Nowhere in art. 51 is it explicit or implicit that the "absenteeism" refers to two consecutive meetings **in a session**. (emphasis added)

[56] In other words the respondents contended that the said art. 51 refers to two consecutive meetings in the **same session**. The 2nd respondent went on to suggest that since the absences (ie, on 19 April 2009 and 9 August 2009) occurred in **two** different sessions, art. 51 therefore has not been breached by the 1st respondent. (emphasis added)

[57] Is this interpretation correct?

[58] Firstly, it must be said that the Kedah State Constitution is silent as to the meaning of the phrase "consecutive meetings" under art. 51. The 2nd respondent attempted to define it by making reference to the other provisions in the Kedah State Constitution, specifically with reference to the definition of the words "meeting" and "session" in art. 2, read with the definition of the term "sitting" in O. 96 of the Standing Rules and Orders of the Legislative Assembly.

[59] In view of the parties' opposing contention, a perusal of the said terms is incumbent. Firstly, the term 'meeting' is defined in art. 2 of the Kedah State Constitution to mean:

> … any sitting or sitting of the Legislative Assembly commencing when the Assembly first meets after being summoned at any time and terminating when the Assembly is adjourned *sine die* or at the conclusion of a session without adjournment.

[60] "Session" in art. 2 of the Kedah State Constitution means:

> the sittings of the Legislative Assembly commencing when the Assembly first meets **after being constituted or after its prorogation or dissolution at any time,** and terminating when the Assembly is prorogued or is **dissolved** without having been prorogued. (emphasis added)

[61] Since the term "sitting" is not defined in the Kedah State Constitution, reference is made to the definition of "sitting" in Standing Order 96 of the Standing Rules and Orders of Legislative Assembly of the State which reads as follows:

> … a period during which the Assembly sitting continuously (apart from any suspension) without adjournment, and includes any period during when the Assembly is in committee.

[62] The term "prorogation" is also in contention and thus its definition is also necessary here. – Firstly, the term "prorogation" is not defined in the Kedah Constitution. Reference is therefore to be made to Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd version, Chapter 13. According to Erskine May, prorogation essentially refers to a situation where the Ruler decides to discontinue the session of a legislative body without dissolving it.

[63] According to Butterworth's *Australian Legal Dictionary* "prorogation" is the means by which a session of Parliament is terminated. The main effects of prorogation are to place the parliament into recess; to cause unfinished business before the houses to lapse; and to prevent the houses of Parliament from meeting.

[64] From a reading of the Kedah State Constitution, the decision to prorogue is the prerogative of HRH the Sultan of Kedah. The discretion is his alone as clearly manifested in art. 53(2) which reads:

> The Ruler may prorogue or dissolve the Legislative Assembly.

[65] It is my view that when the Ruler exercises his discretion under this article, he does not act on a whim or in a vacuum. He **acts on the advice of the State Executive Council by virtue of art. 39(1) of the Kedah State Constitution.** (emphasis added)

[66] In the light of the above, the act of prorogation is therefore a deliberative act and thus with respect, the suggestion that the Ruler is not impeded in commencing a new session without first having the preceding session prorogued is an artless interpretation to the exercise of the Ruler's power under the Kedah State Constitution.

[67] In view of the dynamics involved as alluded to above, can it be said with confidence that the phrase as implied by the respondent (ie, two consecutive meetings in the same session), be read into art. 51?

[68] If one were to entertain the above contention made by the 2nd respondent, then the riposte to the above would involve a determination as to whether there was just one session or more (of the Assembly).

[69] This would naturally lead to the question of whether after the 5th Meeting of the 1st Session, there was a prorogation or dissolution within the meaning, of the Kedah State Constitution, which would in clear terms, indicate that a new and fresh session had begun.

[70] In this context, a scrutiny of each and every call or summon made by the Ruler for each of the meetings beginning with the 1st one which was on 5 May 2008 (described as the 1st Meeting of the Session) is called for.

[71] The 1st meeting of the so called 1st session was summoned, pursuant to the Proclamation issued by the Ruler to that effect.

[72] After the 1st meeting of the Session on 5 May 2008 several subsequent meetings were held thereafter at sporadic intervals. **The meeting would begin with a summons made by the Ruler and at the end of the meeting, it is adjourned *sine die*.** This is equally true for all of the said Legislative Assembly meetings from the 1st right up to the 5th Meeting respectively. (emphasis added)

[73] Given the above element of predictability as regards the procedure involved in the calling for and ending of the Legislative Assembly meeting, it is accepted practice and one in which it is customary for the Ruler to operate as such in exercising his function under the Kedah State Constitution.

[74] To reiterate, it is an accepted "tradition" that all of the Kedah State Assembly Meetings would begin with the Ruler's summons and the said meeting would be adjourned *sine die* unless of course it is dissolved or prorogued by the Ruler.

[75] As regards to prorogation however, it is notable that the procedure or practice of issuing a Proclamation to dissolve or prorogue the Legislative Assembly is not provided for in the Kedah State Constitution but is based on parliamentary practice in the United Kingdom in which "Parliament is usually dissolved by Proclamation."

[76] In view of the 'breaks' in between the meetings where it was "adjourned *sine die*", it is timely to now examine the meaning of the said phrase since its effect will have a bearing on the legal status of the meeting following the preceding one.

[77] The phrase "adjourned *sine die*", according to *Black's Law Dictionary,* 9th edn. p. 47 (in the context of the Assembly meeting) means to end a deliberative Assembly's session without setting a time to reconvene.

[78] Thus when the Assembly resumed its sitting on the next date, (which can be seen in this case to be approximately about two - three months apart), the period between the two dates is termed an "adjournment". In other words, in the context of this appeal, the Legislative Assembly was merely at an adjournment stage in between each meeting. This would mean that the purported 1st Meeting of the Second Session on 9 August 2009 is in actual fact and in law, the 6th Meeting of the First Session.

[79] But the 1st and 2nd respondent thought differently. The respondents took the position that after the 5th meeting on 19 April 2009, the next meeting which was on 9 August 2009 was the first meeting in a new session. In other words the respondents impliedly asserted that the 5th Meeting (of the 1st Session) was not adjourned *sine die* but was dissolved, resulting in the 9 August 2009 meeting being the first meeting of a new Session, which is in their contemplation, the Second Session.

[80] The reason for the respondent's argument is obvious. It is to reconcile its construction of art. 51 that the two absences by the 1st respondent were not in one session but were in two different sessions, which in their view would not attract a breach of art. 51.

[81] This is inferred from their submission where they stated that:

> It is submitted that Article 51 of UTKK (Undang-Undang Tubuh Kerjaaan Kedah) give rise to the following issues:
>
> Whether the fifth meeting of the First Session on 19.4.2009 and the first meeting of the Second Session on 9.8.2009 fall within the constitutional meaning of "consecutive meetings" under Article 51 UTKK.

[82] The above contention with respect, speaks of a murky comprehension of the issue at hand. To begin with, what exactly did the 2nd respondent mean when it speaks of the "constitutional meaning of the phrase consecutive meetings?".

[83] Even if the 2nd respondent conceded that the phrase "consecutive meetings" is not defined in the Kedah State Constitution, the 2nd Respondent's attempt at defining it by making reference to the other provisions in the Kedah State Constitution as had been stated earlier, in no way a help to their cause. This is because the 2nd respondent have failed to accord the clear words in art. 51 their plain and ordinary meaning, and had instead, rendered them superfluous.

[84] Consider this. According to the 2nd respondent the Assembly had been prorogued when the Ruler issued the Proclamation in which the meeting on 9 August 2009 is described as the 1st Meeting of the 2nd Session and that the effect of the Proclamation is to terminate the First Session of the Assembly and the Second Session therefore commences.

[85] The 2nd respondent went on to submit that based on the definitions of "meetings", "sessions" and "sittings" in the Kedah State Constitution, the 1st respondent's first absence on 19 April 2009 was in the 5th Meeting of the 1st Session of the Legislative Assembly, whereas the 1st respondent's second absence on 9 August 2009 was in a different session since it was in the 1st Meeting of the 2nd Session.

[86] The 2nd respondent thus concluded that the 1st Meeting of the Second Session on 9 August 2009 cannot be considered as a "consecutive meeting" to the 5th Meeting (on 19 April 2009) of the 1st Session based on the following grounds:

(a) each session of the Assembly has its own meetings;

(b) a session of the Assembly terminates upon it being prorogued;

(c) the **First Session** of the Assembly was **prorogued** by HRH as a result of the **proclamation** of the Second Session by HRH; and

(d) the Second Session begins with a fresh meeting as each session has its own meetings. (emphasis added)

[87] Given the above, an important question emerges. Was there a prorogation of the 1st Session of the Assembly?. And as an adjunct, if there was such prorogation, is the meeting on 9 August 2008 correctly described in law, as the 1st Meeting of the Second Session?

[88] In my view, it is clear from the definition of the word "session" in art. 2 that a "session" commences when the Assembly first meets **after** being **constituted** or **after its prorogation** or **dissolution at anytime.** (emphasis added)

[89] It is commonplace that during the course of a session the Assembly may adjourn itself (which in this case it did) on its own motion to such date as it pleases. Although sessions are of indeterminate length, in the present appeal the meetings in the session were adjourned *sine die* and when the sittings were resumed, the Assembly would continue to be in session, unless it is dissolved or prorogued. **There was no such proclamation issued by the Ruler to prorogue the Assembly at the end of the 5th meeting of the 1st session on 9 April 2009.**

[90] It was contended by Dato' Kamaluddin Said, Senior Federal Counsel (SFC) acting for the 2nd respondent, that while he conceded that there was no Proclamation to expressly prorogue the Legislative Assembly, he argued that the Assembly is deemed to be prorogued when the Ruler issued the said Proclamation calling for the meeting on 9 August 2008. (emphasis added)

[91] With respect, I disagree with the SFC's view above on two counts. Firstly an adjournment (as was the case of the 5th Meeting) does not have the same effect on parliamentary proceedings as does a prorogation.

As Erskine May pointedly stated:

> ... Upon reassembling, each House proceeds to transact the business previously appointed, and all proceedings are resumed at the stage at which they were left before the adjournment.

Secondly, it is an unsustainable proposition that a Prorogation can be inferred, implied or deemed, as suggested by the SFC.

[92] As clearly stated earlier, **the power to prorogue is the Ruler's discretionary power under art. 53(2), acting on the advice of the State Executive Council, pursuant to art. 39(1)**. (emphasis added)

[93] I can find no evidence of such advice under art. 39(1). HRH does not act unilaterally in the exercise of his discretionary power under art. 53(2).

[94] In the absence of any advice under art. 39(1) and evidence that the Ruler has expressly exercised his power to prorogue under art. 53(2), the meeting on 9 August 2009 is in law, merely a continuation of the 1st Session, making it its 6th Meeting.

[95] At the risk of belabouring the point, the Proclamation by the Ruler issued on 1 July 2009 for the meeting to be held on 9 August 2009 was the 6th Meeting of the 1st Session and was not a prorogation or dissolution of the Legislative Assembly. This contention is fortified if one were to carefully read the meaning of prorogation as expounded in *Erskine May's Treatise (supra)* and the clear provisions of art. 53(2) read together with art. 39(1) as set out above. In any case the Proclamation for 9 August 2009 meeting is similar in form and substance with previous proclamations summoning the 1st to the 5th meetings. Thus in what way has this particular Proclamation for the meeting on

A 9 August 2009 assumed a different character altogether from the previous Proclamations, to justify it being construed a Prorogation? The 2nd respondent has offered no explanation whatsoever as to how the said Proclamation has now morphed into a different character to justify 9 August 2009 meeting of the Assembly being
B labelled or simply referred to as the 1st Meeting of the 2nd Session. A simplistic approach as such could not have been envisaged nor intended.

[96] In my view, the term given to 9 August 2009 as the "1st
C Meeting of the 2nd Session" is therefore a misnomer. At best the term could be utilised for purposes of administrative expedience and at worst, as an erroneous semantic.

[97] With respect, one would be nonplussed as to how such a
D construction as offered by the 2nd respondent could be accepted, given the clear terms in the various provisions of the Kedah State Constitution. One must not lose sight of the fact that it is customary for the Ruler to issue a Proclamation to summon each and every meeting of the Legislative Assembly commencing from
E the date it was first constituted on 5 May 2008 until the meeting on 19 April 2009 (before the 'impugned' meeting on 9 August 2009). Thus to assume that the issuance of a Proclamation describing 9 August 2008 meeting as the 1st Meeting of the 2nd Session as being *ipso facto* evidence that the Legislative Assembly
F has been prorogued is a fallacy.

[98] In the circumstances I agree with the appellant that the meeting on 9 August 2009 although described as the 1st Meeting of the 2nd Session, is in law and in fact, the 6th Meeting of the 1st Session.

G

[99] The above vitiates the 2nd respondent's argument that there were two sessions and that the 1st respondent's absences for two consecutive meetings were not in the same session.

H **[100]** On this note, I agree with the appellant's contention that the phrase "two consecutive meetings" must be given its plain and ordinary meaning.

[101] As is expressed in the *Shorter Oxford English Dictionary on Historical Principles* Vol 1, the word "consecutive" is described as:

I

> Following continuously: Following each of its predecessor in uninterrupted succession.

[102] Based on the above, it is my view that the phrase "two consecutive meetings" appearing in art. 51 refer to one meeting following an earlier one in an uninterrupted succession.

[103] As had been clearly seen, the 5th Meeting was adjourned *sine die* and its resumption on 9 August 2009 was a continuation of its meeting in the same session.

[104] I find that the 2nd respondent's construction of art. 51 that the "absenteeism" relates to "two consecutive meetings in a session" is unsupported by any authority. The 2nd respondent relied on the authority of *Dewan Undangan Negeri Kelantan & Anor v. Nordin Salleh & Anor* [1992] 2 CLJ 1125; [1992] 1 CLJ (Rep) 72 where the Federal Court quoted a passage from the judgment of the High Court in Australia in *AG v. the Commonwealth, ex-relatione McKinley v. Commonwealth of Australia* which stated that:

> … the only true guide and the only course which can produce stability in constitutional law is to read the language of the Constitution itself, no doubt generously and not pedantically, but as a whole and to find its meaning by legal reasoning.

[105] Whilst it is true that the above passage is undoubtedly an established canon of constitutional construction, it has no bearing on the 2nd respondents' argument in this appeal, unless the 2nd respondent was contending that one has to read the constitution as a whole, including making reference to the definitions of "session", "meeting" and "sitting" in O. 96, before one could interpret and construe the phrase "two consecutive meetings". In my view, this approach is unhelpful since the said phrase being undefined in the Kedah Constitution, is to be construed in its literal context.

[106] One other critical point is this: the 2nd respondent had not contended that giving the phrase "two consecutive meetings" its plain and ordinary meaning would lead to an absurdity or is otherwise inconsistent with the purpose and intention of the Kedah State Constitution. Thus for the 2nd respondent to now give in to surplusage by imputing words "in the same session" after the phrase "two consecutive meeting" is to render the provision in art. 51 feckless and incongruous.

[107] Reliance can be placed on the established principles of law in constitutional construction found in the oft-quoted case of *Merdeka University Bhd v. Government of Malaysia* [1981] 1 CLJ 175; [1981] CLJ (Rep) 191 where Eusoffee Abdoolcader J (as he then was) observed that:

> The constitution is not to be construed in any narrow or pedantic sense **but this does not mean that the court is at liberty to stretch or pervert the language of the constitution** in the interests of any legal or constitutional theory or even for the purpose of supplying omission or correcting error … (emphasis added)

[108] Thus applying the said legal principles to the question posed, I hold that the phrase "two consecutive meetings" in art. 51 should be given its plain and ordinary meaning nothing more and nothing less, ie, two consecutive meetings, in uninterrupted succession" in one or more session as happened in this appeal, for as long as the meetings were in succession and the business of the Assembly continues as usual, since it was never prorogued. Once again, in my view the clear, plain and unambiguous language of art. 51 calls for a literal interpretation.

[109] Reverting to the question posed, it is my view is that the 1st respondent was definitely absent in two consecutive meetings in one uninterrupted session. Moreover it is obvious that the language of art. 51 is unpretentious in its clarity in that it refers to the event of "absenteeism" in two consecutive meetings without the leave of the Speaker.

[110] Of far more critical importance is whether the respondents are allowed a careless disregard for a proper constitutional construction of the clear provisions in the Kedah State Constitution, especially those found in arts. 53(1) & (2) and art. 39(1).

[111] In my view in answering the question posed to us, there is no basis to depart from established canons of construction.

Conclusion

[112] For the above reasons, I would answer the question posed in this appeal by stating that to render a seat vacant the words "two consecutive meetings" refer to two consecutive meetings

meaning one following the other in succession whether in the same (ie, one) session or in two separate sessions or more. In my view it is completely irrelevant whether both the meetings were in the same session or otherwise because the 1st respondent absented himself on both meetings which were held consecutively.

[113] In the circumstances I would allow the appeal and restore the orders granted by the High Court.